

1 not sound like the right date.

2 Q Oh, '96 wasn't the date that -- I'm not -- I don't mean
3 to suggest that that was the date the waivers
4 themselves were granted, the waivers in fact had been
5 granted a number of years earlier.

6 A That's correct.

7 Q But you were aware that such waivers existed.

8 A Well, the rule change, this whole proceeding that
9 resulted in the rule change from what I observed
10 appeared to be a change in policy in the Commission
11 where they began formalizing the waivers that were in -
12 - granted in a blanket fashion for Wrangell Radio
13 Group. Actually then we noticed getting letters then
14 from the Commission where they began referencing
15 specific references to waivers that were granted with
16 respect to certain sections of the rules. Previous to
17 that the staff never issued any specific letters
18 granting specific waivers.

19 Q Now this is in the context of a different application
20 and I will deal with that when we go to that
21 application. But I believe that the letter that we're
22 talking about here bears a date of February 18, 1992.

23 A Yes.

24 Q And there was a waiver granted by the Commission staff,
25 I believe the letter refers to two rules.

1 A Yes.

2 Q One being the ownership provision of 74.1232(d) and the
3 other being signal delivery, 74.1231(b).

4 A Correct.

5 Q And that was because -- the signal delivery aspect was
6 because Seward was so isolated?

7 A Yes.

8 Q Now at the time of the sale contract was it your belief
9 that the waivers that we just looked at for the Seward
10 stations could never be altered in any way?

11 A No.

12 Q Did you say anything to Mr. Buchanan as to whether or
13 not the waivers given to the Seward stations could ever
14 be altered?

15 A No.

16 Q Along those lines I want you to take a look at Section
17 316 of the Act.

18 MR. SHOOK: Jeff, I'm giving Mr. Becker a copy of the
19 statute.....

20 MR. SOUTHMAYD: Okay.

21 MR. SHOOK:and asking him to look at Section 316
22 of the Act.

23 A Okay.

24 Q Now have you ever had a chance to read that section
25 before today?

1 A Yes. Oh yes.

2 Q Roughly when did you first look at it?

3 A I couldn't tell you exactly, but I would say somewhere
4 within the last 15 months. I've become a student of
5 the Communications Act of 1934.

6 Q So I take it that you didn't discuss Section 316 with
7 Mr. Buchanan.

8 A No.

9 Q And certainly not then in the context of the Seward
10 translators.

11 A No.

12 Q Let's see, I think I may have a document out of order
13 there. The next document I want you to look at
14 pertains to an application that was filed by Coastal on
15 June 16, 1997 concerning translator station K285AA in
16 Kodiak. And if you can't find it I'll try to locate it
17 for you.

18 (Pause)

19 Q Now I would direct your attention to Exhibit 1 of the
20 application which appears about eight, nine pages in
21 and it runs for three pages. And that's just the
22 narrative portion of the Exhibit. There are a number
23 of attachments that follow. And at this stage all I
24 would like you to do is read to yourself Exhibit 1, the
25 narrative.

- 1 A I'm familiar with it.
- 2 Q You're familiar with it?
- 3 A Yeah, I recall it.
- 4 Q Now there's a reference here to station K285AA and
- 5 Peninsula losing the ability to retransmit KWV FM in
- 6 Kodiak. Do you see that?
- 7 A Yes.
- 8 Q Was that loss of ability to retransmit KWV FM a result
- 9 of an action taken by the United States Air Force?
- 10 A Yes.
- 11 Q What action did the Air Force take?
- 12 A They destroyed the receiving antennas.
- 13 Q And roughly when did that occur?
- 14 A My best recollection would be about May of 1997.
- 15 Middle of May of '97.
- 16 Q Now did the Kodiak 285 translator ever go off the air
- 17 as a result of the Air Force's action?
- 18 A Eventually it did for a period of time, yes. But less
- 19 than a year.
- 20 Q Did Peninsula lose advertising revenues as a result?
- 21 A There was some loss of revenue.
- 22 Q Was Peninsula compensated for its loss in any way by
- 23 the Air Force?
- 24 A No.
- 25 Q Did Peninsula attempt to receive compensation for its

1 loss?

2 A No.

3 Q Now what, if anything, was done to reacquire the signal
4 of KWVV FM on Kodiak once the Air Force destroyed the
5 antenna?

6 A January of 2000 we installed some receive antennas at a
7 site that we didn't know existed previously, or we
8 didn't install them sooner, but we installed receiving
9 antennas again to restore service in January of -- of -
10 - was it 2000 or 2001?

11 UNIDENTIFIED FEMALE: (Indiscernible - not at mic).

12 A Yeah, 2000.

13 Q There's certainly a document we can refer to at some
14 point.

15 A Yeah, January of 2000 we notified the Commission that
16 we were changing the feed from the translator that we
17 we were broadcasting and switching the feed back to
18 K285AA, back to the main signal in -- in Homer off air.

19 Q Now, between the time of the Air Force's action in
20 roughly May of 1997 and the action that you just talked
21 about in January of 2000 what, if anything, did
22 Peninsula do to retransmit KWVV FM, if anything?

23 A Well, we had -- we had installed some -- we tried to
24 pick up the signal and we had a very scratchy terrible
25 signal for a few months running the translator, it was

1 plagued by fading and it became evident it was a lost
2 cause so we just shut them off. And they were off for
3 almost a year.

4 Q So in terms of the work that was done before the
5 translator was shut off, that involved your going to
6 Kodiak Island to try to reacquire the signal?

7 A Yes, uh-huh (affirmative). Right.

8 Q And that was at a -- the site that the antenna was at
9 before or.....

10 A Uh-huh (affirmative).

11 Q did you have to go to a different site, how did
12 this work?

13 A We went to the site where the translator was located,
14 we put up some FM receive antennas, we sort of got a
15 signal that really wasn't adequate and it was a
16 hopeless cause. We -- we were under the impression at
17 the time that there was no other way to get it off air.
18 But that was changed later when the local electronics
19 company there informed us that they had found a place
20 on Pillar where they could get our signals off air and
21 that's where we eventually installed our receive
22 antenna and restored our service.

23 Q Now, with respect to the Exhibit that we just looked
24 at.

25 A Huh-hum (interrogative).

- 1 Q Do you know who prepared the Exhibit?
- 2 A Let's see. Let's see who signed it. Dave Buchanan
- 3 prepared the Exhibit.
- 4 Q My question is relatively narrow at this point, it's
- 5 just whether you have any knowledge as to who prepared
- 6 the Exhibit 1 that we just looked at.
- 7 A Exhibit 1?
- 8 Q Yes sir.
- 9 A Is it signed?
- 10 Q No sir. And if you don't know you can state you don't
- 11 know.
- 12 A I don't know. Well, I think I -- I'm pretty sure that
- 13 I gave Dave Buchanan a lot of the -- the background on
- 14 this problem of the signal delivery there and he put it
- 15 together and submitted it with his application.
- 16 Q All right. That would be your understanding as to how
- 17 this document came to be prepared.
- 18 A Yeah, we -- we talked about it obviously. And I
- 19 assisted him with the technical aspects of it so that
- 20 he understood exactly what was going on there.
- 21 Q Now the next document -- and actually there were, you
- 22 know, two documents.....
- 23 A Yeah.
- 24 Qthere.
- 25 A Okay.

1 Q There's the second document.....

2 A Yes.

3 Qand the second document is a similar one but I
4 believe it concerns station 274 -- K274AB.

5 A Okay.

6 Q Correct?

7 A Yes.

8 Q Now, again going to Exhibit 1.

9 A Okay.

10 Q If you would take a moment to look through that. That
11 appears to be a very similar Exhibit to the one that we
12 just looked at.

13 A Yes.

14 Q Although there seems to be one arguably significant
15 difference. And that is when you look at the first
16 page of Exhibit 1 and you go to the fourth paragraph
17 instead of K285AA being barely on the air what this
18 says is that K274AB currently is off the air.

19 A That's correct.

20 Q Now for those of us who are not as engineering oriented
21 as yourself could you give us some understanding as to
22 how it was that one was barely on the air but the other
23 was off the air altogether?

24 A The previous translator, K285AA, it was receiving a
25 100,000 watt signal on 103.5. This translator was

1 receiving a 1.3 kilowatt ERP signal on 99.3. And it's
2 primarily the difference in power levels between the
3 two signals. There wasn't enough signal to run this
4 translator whereas the other one had some signal but
5 was still inadequate.

6 Q And again, in terms of who actually prepared this
7 Exhibit 1, do you have any knowledge as to who did
8 that?

9 A I don't recall who typed it up, but Buchanan and myself
10 both worked on this I'm pretty sure. Dave Buchanan has
11 an engineering background but I certainly probably
12 assisted him with the technical aspects of this.

13 Q Now, with respect to the first application that we had
14 looked at, the one for Kodiak 285AA, do you have any
15 knowledge as to who prepared the rest of the
16 application other than Exhibit 1?

17 A I don't know. Let's see. Appeared to have something
18 stapled to -- is this another -- what is that?

19 Q Oh, that's something that shouldn't be there. Perhaps.
20 I'll take another look, but.....

21 THE REPORTER: I have a stapler here if you.....

22 MR. SHOOK: That's okay.

23 A I assisted Mr. Buchanan with some of this information.
24 For example I gave him a copy of the Exhibit 3 from the
25 Department of Air Force. This was telling us that the

1 Air Force was going to destroy the antennas, gave him a
2 copy of the letter from the City of Kodiak, I gave him
3 copies of our existing licenses, Exhibit 5. And then I
4 gave him a copy of something I prepared in 1991 which
5 is Exhibit 6. And I think I gave him the Exhibit 1(a)
6 which showed that the Commission had granted us a feed
7 via microwave and satellite for our Seward translators
8 to show the precedent of granting alternative signal
9 deliveries which was done for us in the case of Seward
10 where we were feeding via microwave and satellite so we
11 had a clear precedent for them granting the waiver
12 request. And also gave him a copy of Exhibit 9 which
13 showed some of the audience measurement numbers that we
14 had from our Willhight survey. So, yeah, I assisted
15 him with that.

16 Q In terms of the application form itself, there appear
17 to be -- I'll count them, one, two, three, four, five,
18 six, seven pages that appear here.

19 A Uh-huh (affirmative).

20 Q Did Peninsula provide any assistance in the preparation
21 of this.....

22 A Yes.

23 Qportion? And to your recollection what assistance
24 was provided?

25 A Just to help him understand the forum. Dave is -- was

1 not really well acquainted yet at that point of filling
2 these out and I went through it with him to make sure
3 that he, you know, had answered it completely and it
4 was a complete application to file. But he was the one
5 proposing to make the changes since he was the proposed
6 assignee of the -- of the translator. So he was going
7 to get these things and as the proposed assignee we
8 thought that this thing would be approved and he'd be
9 on the air within maybe three months and he could get
10 going.

11 Q And the same situation would be the case with respect
12 to the other Kodiak translator.....

13 A Yes.

14 Qin terms of who provided what assistance.....

15 A Sure.

16 Qand how it came to be prepared?

17 A Uh-huh (affirmative).

18 Q Did you ever discuss with Mr. Buchanan the likelihood
19 of success of the two Kodiak applications that we just
20 talked about?

21 A Well, we felt that they -- based on the precedent which
22 was to grant alternate signal delivery for our Seward
23 translators we thought we had a outstanding likelihood
24 that it would be granted. And the primary reason being
25 it was simply to restore service to translators that

1 had been established there for many years. It wasn't a
2 case of going into a brand new area and trying to
3 establish a translator in a non-white area, it was
4 simply to restore service to translators that had
5 served that community for a number of years.

6 Q To your recollection was Coastal's applications to
7 change the signal delivery methods for Kodiak opposed
8 in any way?

9 A They were not opposed to my recollection.

10 Q Now in the next stack of do -- not that one and not
11 that one either. Not that one. Beginning with that
12 one. I want to direct your attention to some letters.
13 And in this case they appear under the heading of what
14 is called attachment C in the stack that you have. And
15 I believe, if we're looking at the same thing, it
16 should be a letter dated November 12, 1997.

17 A Yes.

18 Q And I believe this is a letter that you had referenced
19 in previous testimony not too long ago where the
20 Commission is being informed that K274AB is going off
21 the air completely?

22 A On behalf of Peninsula Communications this is to notify
23 the Commission that FM translator K274AB Kodiak, Alaska
24 has temporarily ceased broadcast operation as of this
25 date.

1 Q Now if I understood the import of Exhibit 1 of the
2 application for K274AB it appeared to me that K274AB
3 had gone off the air some months earlier.

4 A That is correct.

5 Q Now what, if anything, had happened between May of 1997
6 and November of 1997? I take it there -- something
7 happened with respect to K274AB.

8 A It was -- it was turned off in May actually of '97.
9 And it appears that we failed to notify the Commission
10 sooner. I think this is probably an oversight.

11 Q Now it -- had it gone back on the air between May and
12 November of 1997?

13 A Between May and November?

14 Q Right. And the basis for my question, just so you know
15 why I'm asking the question the way I am, the
16 application indicated that the station had gone off the
17 air in May of 1997.....

18 A Right.

19 Qwe just talked about that. And now we're looking
20 at a letter that bears a date in November that informs
21 the Commission that K274AB is off the air.

22 A That's correct.

23 Q And my question is between May and November did the
24 station ever go back on the air?

25 A Yes.

- 1 Q It did.
- 2 A Uh-huh (affirmative).
- 3 Q And it went on the air rebroadcasting what?
- 4 A It was on the air rebroadcasting KPEN.
- 5 Q And how did K274AB receive KPEN?
- 6 A Via satellite.
- 7 Q Via satellite. Okay.
- 8 A Uh-huh (affirmative). For a brief probably one week
- 9 period of time.
- 10 Q So in that sense there would have been -- K274AB was
- 11 kept alive, if you will, as a consequence of receipt of
- 12 the satellite signal?
- 13 A It was only a test of our -- of our ability to feed it
- 14 via satellite. But we did not leave it on. We had the
- 15 ability to feed it at that point because we had
- 16 constructed our uplink. And we had intended to as soon
- 17 as we got approval to feed it that way.
- 18 Q Ah, I see. That was the system that was going to be
- 19 utilized in the event.....
- 20 A Yes.
- 21 Qthe application was granted?
- 22 A That's right.
- 23 Q Now was a similar test performed with respect to
- 24 K285.....
- 25 A Yes.

1 QAA? So in other words for that test KVVV would
2 have been transmitted up to a satellite and then
3 downlinked to the.....

4 A Yes.

5 Qtranslator in order to see whether or not it could
6 receive it?

7 A Yes. That was in preparation. We anticipated a grant
8 giving us pro -- permission to feed it so we were ready
9 to go if and when the Commission granted it.

10 Q Now, you can get rid of that and that. And the next.
11 All right. So, the letter I would like to have you
12 focus on now is dated March 4, 1996. And it's a three
13 page letter addressed to Peninsula Communications, Inc.
14 and bears the signature of a person named Stewart B.
15 Videl (ph) for Linda Blair. And if you could please
16 read the first two sentences of the letter aloud.

17 A In a -- dear licensee, an examination of Peninsula's
18 recently filed applications indicate that Peninsula may
19 be -- may be in violation of the Commission's revised
20 ownership and support rules governing commercial FM
21 translator stations, see 47 CFR Section 73.1232(d) and
22 (e). If this is in fact the case Peninsula must
23 immediately divest itself of ownership and support
24 interest in all non-compliant stations. More
25 specifically from Pen.....

- 1 Q That's.....
- 2 A Okay.
- 3 Qwe don't have to go further at this point.
- 4 A Right. I thought you said paragraphs one and two.
- 5 Q Oh, first senten -- first two sentences.
- 6 A Oh, I'm sorry.
- 7 Q That's okay. And do you recall approximately when you
- 8 received this letter?
- 9 A Sometime in March of '96.
- 10 Q And I take it you read the letter in its entirety?
- 11 A Yes.
- 12 Q And what actions, if any, did you take as a consequence
- 13 of receiving this letter?
- 14 A Well, I talked to my attorney about it.
- 15 Q And do you recall taking any other actions besides
- 16 talking with your attorney?
- 17 A I think we decided that we would attempt to find a
- 18 buyer at that point in time. It seemed to be the path
- 19 of least resistance.
- 20 Q And so roughly sometime in March is when you started to
- 21 look for a potential buyer which resulted in the Asset
- 22 Purchase Agreement with Mr. Buchanan?
- 23 A Sometime between March and November of '96, yeah.
- 24 Yeah, I had contacted several potential buyers, but
- 25 Dave Buchanan was really the likely choice once we

1 discussed it with him.

2 Q Now the next document I'd like you to look at is a ten
3 page letter bearing a date of September 11, 1996. And
4 it's addressed to Jeffrey D. Southmayd, Esquire, it's
5 signed by Linda Blair.

6 A Uh-huh (affirmative).

7 Q And I take it you've seen this letter before today?

8 A Yes.

9 Q And you would have seen it shortly after September 11,
10 1996?

11 A Yes.

12 Q And did you read it in its entirety?

13 A Yes.

14 Q What actions, if any, did you take as a consequence of
15 this letter?

16 A Well, the letter represented that if we found someone
17 to buy these translators that they would renew our
18 licenses and that would be the end of the matter. So
19 we found a buyer and that's what we intended to do.

20 Q All right. The next document I'd like you to look at
21 is styled Opposition to Application for Review and it
22 bears a stamp date of October 25, 1996 reflecting a
23 filing at the Commission on that date. And if you
24 would just take a -- you know, as much time as you want
25 to look through the pleading.

1 A All right.

2 UNIDENTIFIED FEMALE: Hello?

3 MR. SHOOK: Jeff, are you still there?

4 THE WITNESS: He's trying to get him to hang up the
5 phone there.

6 MR. SHOOK: Jeff?

7 THE WITNESS: I think he's there, he's just out of the
8 room.

9 MR. SHOOK: Okay. Well then why don't we wait a
10 minute.

11 (Pause)

12 MR. SHOOK: Are you back Jeff?

13 MR. SOUTHMAYD: I'm back, sorry.

14 MR. SHOOK: That's okay. Jeff, I don't know if you
15 heard where we are at this point.

16 MR. SOUTHMAYD: Well, he was looking at the Opposition
17 to the Application for Review.

18 MR. SHOOK: Oh, good. Well, then you did hear.

19 THE WITNESS: He's right on course.

20 MR. SHOOK RESUMES:

21 Q All right. Mr. Becker, did Peninsula authorize the
22 filing of this pleading?

23 A Yes.

24 Q I want to direct your attention to page three. And if
25 you could please read aloud the second full paragraph

1 on that page.

2 A Following the issuance of the ruling Peninsula
3 determined not to seek review or reconsideration of the
4 ruling. In this regard it is Peninsula's intent to
5 comply in all respects with the ruling of the Chief ASD
6 and to file appropriate assignment applications to
7 divest its interest in the subject non-fill in
8 translators within the 60 day required time frame.

9 Q And is it your understanding that you did or did not
10 file appropriate assignment applications?

11 A We did.

12 Q Now the next letter I'd like you to look at is a three
13 page letter. It has a little stamp on it indicating
14 June 17, 1997. There are three addressees the first of
15 which is Jeffrey D. Southmayd and the letter is signed
16 by Linda Blair. Have you seen this letter before
17 today?

18 A Well, let me look at it.

19 (Pause)

20 A Yes, I recall the letter.

21 Q And you would have seen it shortly after the date
22 that.....

23 A Yes.

24 Qit was issued?

25 A Uh-huh (affirmative).

1 Q What actions, if any, did you take as a consequence of
2 this letter?

3 A Well, the letter primarily objects to the fact that
4 Peninsula would carry the note on the purchase. Our
5 position was that we would only be holding the
6 equipment as collateral as anyone would who sold
7 something and then retained a right to repossess that
8 equipment if they didn't pay -- make the payments, as
9 on any transaction. And we had offered a six percent
10 interest rate on the note and a 20 year period. And
11 the Commission had a problem with that because they
12 felt that Peninsula would somehow still retain some
13 interest in these translators, which I still don't
14 agree with. But, in any event, I think they wanted us
15 to do something different in terms of the finan -- the
16 financial or the financing that Coastal would need to
17 complete the purchase. So I think we modified our
18 agreement with Coastal and then refiled it.

19 Q Now the next letter I'd like you to look at is a five
20 page letter and it bears a stamp date of November 6,
21 1997.

22 A Okay.

23 Q The first addressee is Jeffrey D. Southmayd and it's
24 signed by Linda Blair.

25 A Okay.

1 Q And after you've had a chance to familiarize yourself
2 with the letter I'll ask some questions.

3 (Pause)

4 A I'm familiar with it.

5 Q Have you seen this letter before today?

6 A Yes.

7 Q Shortly after November 6, 1997 was when you first saw
8 it?

9 A Yes.

10 Q Now what actions, if any, did you take as a consequence
11 of this letter?

12 A Well, really there was not any action to be taken
13 because they conditioned our -- we couldn't complete
14 the sale because they added a new condition stating
15 that we would have to wait on the outcome of the next
16 license renewal cycle before we could complete the --
17 consummate the assignment which in fact then added
18 another two years to the transfer.

19 Q And by the other renewal cycle, that references the
20 1997.....

21 A The footnote seven here the says that they're granted
22 but they're granted subject to a new condition which
23 was put in here that we would have to wait on the next
24 renewal cycle before we could plead -- could complete
25 our assignment, which effectively shut down our deal

1 right here. That's what did it.

2 Q Now the next document I'd like you to look at is styled
3 Opposition to Application for Review and it reflects a
4 Commission stamp receipt date of December 30, 1997.

5 A Uh-huh (affirmative).

6 Q And if you would just take a moment to familiarize --
7 or however long you need to familiarize yourself with
8 the document.

9 (Pause)

10 A The date is what?

11 Q December 30, 1997.

12 A Okay. Okay.

13 Q Now if you could go to -- first of all, my question is
14 did you authorize the filing of this pleading?

15 A Yes.

16 Q I would like you to direct your attention to page
17 eight. And if you could please read the last -- read
18 aloud the last full paragraph.....

19 A Uh-huh (affirmative).

20 Qthat appears on that page.

21 A Based on the foregoing PCI submits that the action of
22 the Chief in granting the subject license renewal
23 applications was fair and consistent with the facts and
24 existing legal precedent for approving such
25 applications. The application by the Petitioners

1 seeking Commission review of the -- seeking Commission
2 review, must be of, the Chief's action should be
3 summarily denied and PCS should be allowed to
4 consummate the sale of its FM translators to Coastal.

5 Q Now the next document I'd like you to look at is a
6 Commission Memorandum Opinion and Order, FCC98-314,
7 bears a release date of December 10, 1998 and it
8 concerns applications of Peninsula Communications, Inc.

9 A Okay.

10 Q I take it you've seen this Order before.

11 A Yes.

12 Q And would it be fair to say that you read the Order
13 shortly -- within a month or within a month after its
14 release?

15 A Yes.

16 Q Did you discuss this Order with Mr. Buchanan?

17 A Certainly.

18 Q And what, if anything, do you recall discussing with
19 him about this Order? I recognize that may take awhile
20 for you to take a look through the Order so feel free.

21 (Pause)

22 A Okay, I'm familiar with it.

23 Q Now did you discuss with Mr. Buchanan that this Order
24 denied the Coastal applications for the Kodiak
25 translators to receive the signals of KPEN and KWVV by

1 alternative means?

2 A This order effectively destroyed our deal. Because we
3 couldn't restore service to Kodiak and then it
4 threatened the termination of our Seward translators at
5 some point in the future. And both of these things
6 basically shut down our deal because I was trying to
7 sell him nine functional translators and this is the
8 first point in time where it looked like four of them
9 were in jeopardy.

10 Q Now, with respect to the other five was there any
11 impediment to the sale of those five so far as you
12 knew?

13 A Well, there again, the impediment was that the -- see,
14 the Commission expressly represented that if we would
15 transfer these translators to an independent party that
16 the licenses would be renewed and that would be the end
17 of the matter. They tied the consummation to the next
18 round of license renewals which effectively added
19 another two years at least to the time frame of the
20 sale and then refused to give us the waivers which
21 would have restored our service to Kodiak. And then
22 they threatened the future termination of our Seward
23 translators which put the whole sale in jeopardy.

24 Q Is that because the Seward and the Kodiak components
25 were so important to the deal?

1 A Yes, they're all important, all nine of these things
2 are important. I was trying to sell him nine
3 translators and he was effectively only going to get
4 five.

5 Q Let me see if I understand the market situation that
6 we're talking about here. There probably may not -- if
7 there's a difference in the market situation between
8 December '98 and now, you know, please enlighten me.
9 But assuming that they're roughly the same, from a
10 population standpoint Seward has the least population,
11 does it not, of the five major components of this sale?
12 And by five major components let me explain what I'm
13 referring to. Kenai, Soldotna, Homer, Kodiak, Seward.
14 Wouldn't Seward be the least populated of that -- those
15 groups of five?

16 A Seward -- yes, correct.

17 Q And in fact wouldn't it be by a fair percentage? I
18 mean Seward is relatively tiny compared to the other
19 four areas.

20 A But that's not the only factor in the equation.

21 Q No, I understand. But just in terms of understanding
22 what we're looking at here.

23 A Yeah, but you also have to look at market competition
24 and how many other signals there are in the market and
25 how the market's being divided by competition.

1 Q Okay. So if you could enlighten us as to what you're
2 thinking of here.

3 A Well, Kenai Soldotna has many, many radio signals. And
4 therefore there's much greater competition in the Kenai
5 Soldotna area than there is in Seward. Likewise Kodiak
6 only has one other commercial FM station and one other
7 commercial AM station. So the competition in both
8 Kodiak and Seward is far less. And so even though you
9 may have smaller population in Seward you may have a
10 more significant share of the audience and therefore
11 that -- that translator may be more significant in
12 terms of what it's reaching.

13 Q I think I understand where you're going with this, but
14 let me make sure I do. In Seward -- now, let me
15 backtrack a minute. As I understand the market the
16 Kenai Peninsula itself, which includes for purposes of
17 our discussion now Kenai, Soldotna, Homer and Seward,
18 has a total population roughly in the vicinity of
19 50,000 people.

20 A Uh-huh (affirmative).

21 Q And as I understand it Seward's population is somewhere
22 in the range of 4,000 to 5,000.

23 A Ten percent.

24 Q Ten percent. So that the total number of potential
25 ears in Seward for the radio programming we're talking

1 about is that grand total of 5,000 people. Correct?

2 A Correct.

3 Q Now if the Seward stations happen to be lost or
4 otherwise unavailable in this transaction from an
5 economic standpoint wouldn't that be a relatively minor
6 aspect of the sale?

7 A No.

8 Q Okay. And if you could -- I know you tried to explain
9 to me before, but if you could make it as clear as you
10 can, why is it that Seward becomes important if what
11 we're talking about is the smallest number of people
12 who are going to be affected by the inability to
13 receive these signals?

14 A There's more at work here than just finances. There's
15 audience response and people who depend on us. We have
16 established a very loyal audience in Seward and in fact
17 we were their only service for six years in Seward.
18 And we have people who depend on these stations and who
19 are a very loyal component of -- of the radio listening
20 audience in Seward. These things are more than just
21 finances, there's a public interest benefit of these
22 translators being in Seward. I went in there and
23 provided first time FM service, commercial FM service,
24 to that community which had nothing. And I was on the
25 air for six years, actually longer than that, almost

1 seven years, before my competitor came along and put
2 his station on and then cried unfair competition. I
3 was in there, I developed that market and I brought
4 service to that community and we got a -- we have a
5 great loyal following of people that listen to our
6 stations there as a result of serving that community.
7 And it's more than dollars and cents. We provide
8 information and programming and a -- and a connection.
9 Seward's an isolated connection. I mean they are
10 surrounded by mountains, they're an isolated community,
11 we connect them with the rest of the Peninsula and
12 what's going on. And this -- this is more than just
13 money. These are people's lives who depend on us.

14 Q Now is that the same situation in Kodiak or is there a
15 different.....

16 A Yes.

17 Q dynamic at work there?

18 A No, there is almost the same dynamic in Kodiak. And
19 Kodiak's a little different because it's even more
20 isolated. Kodiak's an island community and I would
21 love for the Commission to go down there and talk to
22 the community of Kodiak and get firsthand what people
23 think of us being on that -- on that island there.
24 They have a tie to the mainland. They can -- they
25 consider the peninsula the mainland part of Alaska and

1 those folks down there are connected. Before I put
2 those stations on the air they had one radio station in
3 Kodiak. And I brought in service, I mean you can see,
4 you have 7,000 people listening a week, you're doing
5 something right. And we know from our surveys that
6 people listen to us and they like what they're hearing
7 and we're serving that community. And we -- we were
8 the pioneer in there, we went on the air almost 20
9 years ago. I've had competitors who came along later,
10 built their stations and then said you're unfair
11 competition. And that's -- I feel that's wrong. I've
12 spent the funds, I developed these stations, I brought
13 service to these communities that never had it and now
14 the Commission's taking it on to try to destroy what
15 I've built. For the benefit of the people that have
16 had nothing. There was one station on the peninsula
17 when I started, KSRM AM, and I've brought service to
18 this community, I brought service to Seward, I brought
19 service to Kodiak, and none of it existed before. And
20 that's what's involved here. There's more than just
21 dollars and cents and I wish you could see it.

22 Q Now with respect to Kodiak, you had mentioned the
23 figure 7,000. As I understand it the listening
24 audience, the total listening audience that exists for
25 the Kodiak radio providers is roughly in the vicinity

1 of 14,000 or 15,000 people?

2 A That is correct. You have people in Kodiak that
3 because there's so few stations sample all the stations
4 pretty much all the time. They're dial spinners like
5 anywhere else. And so they're listening to us, they're
6 listening to the local station, they hop around. You
7 talk to anybody down there, and I was recently there at
8 Comfish, they are glad we're there.

9 Q Now what if -- with respect to Seward and then I'll ask
10 the same question for Kodiak. With respect to Seward
11 what, if anything, prevents Peninsula from becoming a
12 full service broadcaster in Seward as opposed to coming
13 in by way of a translator?

14 A Nothing.

15 Q And with respect to Kodiak what, if anything, prevents
16 Peninsula coming in as a full-time, you know, full
17 power broadcaster as opposed to coming in via
18 translator?

19 A Nothing. Except there's a freeze that's been on for
20 the last five years that you can't build anything,
21 either AM or FM, till the freeze is lifted. So until
22 the freeze is lifted you're not going to build anything
23 anywhere.

24 Q All right. I thought I knew practically everything
25 about Commission Orders but you've got me stumped here.

1 What is it that you're referring to?

2 A The FM -- the freeze on -- you can't -- you can't build
3 an FM station, everything's locked up because of
4 auction 38.

5 Q Ah, okay, there's an auctions problem. Very good.
6 Okay. And what is it about auctions 38 that has an
7 impact here?

8 A There is a freeze on new applications. You can't file.
9 You can't file an application to build anything, either
10 AM or FM. The freeze applies to commercial, non-
11 commercial and AM. So you can't construct any new
12 facilities.

13 Q And what was the onset date of that as best as you can
14 remember?

15 A Well, I know the freeze, correct me if I'm wrong Jeff,
16 but that's been what, at least five years on FM
17 commercial? Did we lose him?

18 MR. SOUTHMAYD: I think it was November of '96.

19 A November of '96, okay. It's longer than that, almost
20 six years. So there is no alternative to these
21 translators. I can't just go and file and propose to
22 build a full power facility until whenever the
23 Commission decides that they're going to remove this
24 freeze.

25 (Whispered conversation)

1 Q The next document I would like you to look at is styled
2 Summary of Petition for Reconsideration. That's the
3 first page of it and on the second page you'll see has
4 the -- has a title of Petition for Reconsideration.
5 And the document in question bears a date stamp of
6 January 11, 1999 reflecting a filing at the Commission
7 on that date.

8 A Uh-huh (affirmative).

9 Q And if you would please just read the document to
10 yourself or any portion of the document that you wish
11 to read to yourself.

12 A Okay, I'm familiar with the document.

13 Q The question that I have at this point is why is it
14 that Peninsula but not Coastal is seeking
15 reconsideration of the Commission's denial of Coastal's
16 applications concerning the Kodiak translators?

17 A That requires a legal opinion which I can't give you.

18 Q All right. I.....

19 A Mr. Southmayd can maybe answer that.

20 Q Well, fortunately for both of us I'm not deposing him.

21 A Uh-huh (affirmative).

22 Q So I'll phrase my question a little bit differently.
23 What is your understanding as to why Peninsula but not
24 Coastal filed for reconsideration of the Commission's
25 decision to deny the Coastal application?

- 1 A I can only say that we thought it was a permissible
2 filing. We wanted to get the sale consummated. And
3 this was filed -- what was the date?
- 4 Q January 11, 1999.
- 5 A The -- this was a reconsideration of the first
6 Memorandum Opinion and Order if I -- if I'm reading it
7 right.
- 8 Q Well, to put it into perspective, yes, it was a
9 reconsideration of FCC98-314.....
- 10 A Right.
- 11 Qwhich is the order that we were just.....
- 12 A Yes.
- 13 Qtalking about.
- 14 A We're certainly a party to what's going on here so I
15 don't understand where the problem's at.
- 16 Q No, all I'm asking -- I'm not -- I mean you may think
17 that I'm suggesting that there's a problem and perhaps
18 I am. But my question simply is what was your
19 understanding as to why Peninsula and not Coastal.
- 20 A Well, the actions of the Commission were so outrageous
21 that I guess we felt like we needed to come in and try
22 to correct what -- what -- the tact the Commission was
23 on.
- 24 Q Now following the Commission grant of the assignment
25 applications that are referenced in FCC98-314.

1 A Uh-huh (affirmative).

2 Q Did you attempt to consummate the sale with Coastal?

3 A Well, we couldn't go forward with the sale because the
4 Commission put new conditions on the -- that Report and
5 Order threatened the termination of the Seward
6 translators and it didn't allow us to restore the
7 service to our Kodiak translators. And this Petition
8 for Reconsideration was to simply point out that the
9 Commission had been inconsistent in their granting of
10 waivers and we showed examples of how they had granted
11 waivers to various other FM translators in Alaska
12 pursuant to Wrangell and allowed for alternate signal
13 delivery. We tried to show that it was entirely
14 reasonable and consistent with other translators that
15 were given CP's and licenses to operate contrary to the
16 '94 ruling. We pointed out the examples of Northern
17 Light Network that had translators in Sitka, Haines and
18 Wrangell, all granted after the '94 cut off date of
19 June 1st of '94. With the exception of the Haines,
20 that one was -- or the Sitka one was actually granted
21 in '93 and we saw no reason why we shouldn't be allowed
22 to have waivers to restore service to our Kodiak
23 translators, that's what this was all about.

24 Q All right.

25 A And the Commission thing about non-white areas is